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Attorneys for Plaintiff and the Class

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**Loretta Williams**, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

**DDR Media, LLC**, a Pennsylvania limited  
liability company, **d/b/a Royal Marketing  
Group**, and **Lead Intelligence, Inc.**, a  
Delaware corporation, **d/b/a Jornaya**,

Defendants.

Case No. 3:22-cv-03789-SI

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

**JURY TRIAL DEMANDED**

1. Plaintiff Loretta Williams (“Plaintiff” or “Williams”) brings this First Amended Class Action Complaint and Jury Demand (“Complaint”) against Defendants DDR Media, LLC d/b/a Royal Marketing Group (“DDR Media”) and Lead Intelligence, Inc. d/b/a Jornaya (“Jornaya”, and collectively with DDR Media, “Defendants”) to obtain redress for, and to put an end to, Defendants’ serial wiretapping of the electronic communications of visitors to DDR Media’s websites, including snappyrent2own.com.



1 DDR Media's other lead generation websites.

2 12. Unfortunately for Defendants, their conduct constitutes wiretapping under  
3 California law because Defendants do not secure prior express consent before recording their  
4 movements on the websites.

5 13. As a result of Defendants' violations of the CIPA, Plaintiff Williams and the  
6 members of the Class were deprived of their privacy rights guaranteed to them by California law,  
7 and they are thus entitled to injunctive relief and statutory damages in the amount of \$5,000 for  
8 each violation. *See* Cal. Penal Code § 637.2.

9 **PARTIES**

10 14. Plaintiff Williams is a natural person and citizen of the State of California.

11 15. Defendant DDR Media is a Pennsylvania limited liability company with its  
12 principal place of business located in Harrisburg, Pennsylvania, who at the time in question, was  
13 doing business as Royal Marketing Group.

14 16. Defendant Jornaya is a Delaware corporation with its principal places of business  
15 located in Conshohocken, PA.

16 **JURISDICTION AND VENUE**

17 17. This Court has subject matter jurisdiction under the Class Action Fairness Act, 28  
18 U.S.C. § 1332(d), *et seq.* ("CAFA"), because the class consists of over 100 people, at least one  
19 member of each class is from a State other than the state of the Defendants, and the amounts in  
20 controversy are over \$5,000,000. Further, none of the exceptions to CAFA jurisdiction apply.

21 18. This Court has personal jurisdiction over Defendants because they conduct  
22 substantial business in this District, the unlawful conduct alleged in the Complaint occurred in  
23 and/or was directed to this District, and Plaintiff's claims arise out of each Defendants' forum-  
24 related activities.

25 19. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of  
26 the events and omissions giving rise to the claims occurred in this District.

27 **FACTS SPECIFIC TO PLAINTIFF**

28 20. On or around December 10, 2021, Williams visited scrappyrent2own.com, a

1 website owned and operated by DDR Media.

2 21. During that visit, the Jornaya TCPA Guardian replay function created a video that  
3 captured Williams' keystrokes and clicks on the website. It also captured the date and time of the  
4 visit, her IP address, and her geographic location.

5 22. Jornaya also recorded Williams's name, address, and phone number.

6 23. Simply stated, Williams's interaction (including her keystrokes and mouse  
7 movement and clicks) was recorded by DDR Media and Jornaya using Jornaya's "TCPA  
8 Guardian" technology.

9 24. This recording was done without Plaintiff's consent. Defendants did not inform  
10 website visitors that their strokes and clicks would be recorded, much less secure prior express  
11 consent. Indeed, the wiretapping began the moment Williams and other members of the alleged  
12 Class visited the webpage.

13 25. All TCPA Guardian videos are hosted on Jornaya's servers, and to access the videos  
14 one must follow a hyperlink provided by Jornaya. Moreover, Jornaya independently collects and  
15 stores information provided by web users on the websites of its clients.

16 26. Members of the alleged Class were unlawfully monitored in the same way as  
17 Williams was: Jornaya's software functions the exact same way no matter which persons is visiting  
18 a site, or which of DDR Media's websites the person is visiting.

19 27. For wiretapping her visit to DDR Media's website, Plaintiff brings this suit, on  
20 behalf of herself and those similarly situated, to put an end to Defendants' repeated and widespread  
21 CIPA violations. Such violations entitle her, and other similarly situated persons, to injunctive  
22 relief plus statutory damages of \$5,000 per violation.

### 23 CLASS ACTION ALLEGATIONS

24 28. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure Rules  
25 23(b)(2) and 23(b)(3) on behalf of herself and a Class defined as follows:

26 All persons in California who: (1) from a date one year prior to the filing of the  
27 initial complaint in this action to the date notice is sent to the Class; (2) visited one  
28 of DDR Media's websites; (3) which utilized Jornaya's "TCPA Guardian" or  
similar Jornaya software; (4) who had their electronic communications intercepted

1 and/or recorded by Jornaya; and (5) where the Defendants claim to have secured  
2 prior express consent to monitor, record, collect, and store electronic  
3 communications in the same manner as they claim to have secured prior express  
4 consent from Williams, or where Defendants do not claim they secured any such  
5 prior express consent.

6 29. Excluded from the Class are: (1) Defendants, Defendants' agents, subsidiaries,  
7 parents, successors, predecessors, and any entity in which Defendants or their parents have a  
8 controlling interest, and those entities' officers and directors, (2) the Judge or Magistrate Judge to  
9 whom this case is assigned and the Judge's or Magistrate Judge's immediate family, (3) Plaintiff's  
10 counsel and Defendants' counsel; (4) persons who execute and file a timely request for exclusion,  
11 (5) persons who have had their claims in this matter finally adjudicated and/or otherwise released,  
12 and (6) the legal representatives, successors, and assigns of any such excluded person. Plaintiff  
13 anticipates the need to amend the class definition following a reasonable period for discovery  
14 regarding the contours of the Class.

15 30. **Numerosity:** The exact number of class members is unknown to Plaintiff at this  
16 time, but it is clear that individual joinder is impracticable. On information and belief, Defendants  
17 wiretapped thousands of California residents. Further, the class members can readily be ascertained  
18 through Defendants' records.

19 31. **Commonality:** Common questions of law and fact exist as to all members of the  
20 Class for which this proceeding will provide common answers in a single stroke based upon  
21 common evidence, including:

- 22 (a) Whether Defendants' conduct described herein violated the CIPA;
- 23 (b) Whether Defendants secured prior express consent before monitoring, recording,  
24 collecting, and storing the electronic communications of Plaintiff and the Class;
- 25 (c) Whether Defendants have violated the California Constitution; and
- 26 (d) The proper measure of damages.

27 32. **Typicality:** As a result of Defendants' uniform and repeated pattern of unlawful  
28 recording, Plaintiff and the class members suffered the same injury and similar damages. If  
29 Defendants' actions violated the CIPA as to Plaintiff, then they violated the CIPA as to all class  
30 members. Thus, Plaintiff's claims are typical of the claims of the other class members.

1           33.     **Adequate Representation:** Plaintiff is a member of the Class and both she and her  
 2 counsel will fairly and adequately represent and protect the interests of the Class, as neither has  
 3 interests adverse to those of the class members and Defendants have no defenses unique to  
 4 Plaintiff. In addition, Plaintiff has retained counsel competent and experienced in complex  
 5 litigation and class actions. Further, Plaintiff and her counsel are committed to vigorously  
 6 prosecuting this action on behalf of the members of the Class, and they have the financial resources  
 7 to do so.

8           34.     **Conduct Applicable Towards Class as a Whole:** Defendants acted consistently  
 9 with respect to every member of the Class. No Class Member was treated specially or different as  
 10 Defendants acted in the same manner with respect to all Class Members. As such, injunctive relief  
 11 and corresponding declaratory relief are available and appropriate.

12           35.     **Predominance:** The common questions of law and fact set forth above go to the  
 13 very heart of the controversy and predominate over any supposed individualized questions.  
 14 Irrespective of any given class member's situation, the answer to whether Defendants' conduct  
 15 described herein repeatedly violated the CIPA is the same for everyone—a resounding “yes”—and  
 16 the same will be proven using common evidence.

17           36.     **Superiority and Manageability:** A class action is superior to all other methods of  
 18 adjudicating the controversy. Joinder of all class members is impractical, and the damages suffered  
 19 by/available to the individual class members will likely be small relative to the cost associated with  
 20 prosecuting an action. Thus, the expense of litigating an individual action will likely prohibit the  
 21 class members from obtaining effective relief for Defendants' misconduct. In addition, there are  
 22 numerous common factual and legal questions that could result in inconsistent verdicts should  
 23 there be several successive trials. In contrast, a class action will present far fewer management  
 24 difficulties, as it will increase efficiency and decrease expense. Further, class-wide adjudication  
 25 will also ensure a uniform decision for the class members.

26                                   **FIRST CAUSE OF ACTION**  
 27                                   **Violation of Cal. Penal Code § 631, *et seq.***  
                                      **(On Behalf of Plaintiff and the Class)**

28           37.     Plaintiff incorporates by reference the foregoing allegations as if fully set forth

1 herein.

2 38. The CIPA provides that it is a violation of Cal. Penal Code § 631(a) for a defendant,  
3 “by means of any machine, instrument, contrivance, or in any other matter,” to do any of the  
4 following:

5 Intentionally tap[], or make[] any unauthorized connection, whether physically,  
6 electrically, acoustically, inductively or otherwise, with any telegraph or telephone  
7 wire, line, cable, or instrument, including the wire, line, cable, or instrument of any  
internal telephonic communication system,

8 Or

9 Willfully and without the consent of all parties to the communication, or in any  
10 unauthorized manner, read[] or attempt[] to read or learn the contents or meaning  
11 of any message, report, or communication while the same is in transit or passing  
12 over any wire, line or cable or is being sent from or received at any place within  
this state,

13 Or

14 Use[], or attempt[] to use, in any manner, or for any purpose, or to communicate in  
15 any way, any information so obtained,

16 Or

17 Aid[], agree[] with, employ[], or conspire[] with any person or persons to  
18 unlawfully do, or permit or cause to be done any of the acts or things mentioned  
above in this section.

19 39. Section 631(a) is not limited to phone lines. *See Matera v. Google Inc.*, 2016 WL  
20 8200619, at \*21 (N.D. Cal. Aug. 12, 2016) (CIPA applies to “new technologies” and must be  
21 construed broadly to effectuate its remedial purpose of protecting privacy); *Bradley v. Google,*  
22 *Inc.*, 2006 WL 3798134, at \*5-6 (N.D. Cal. Dec. 22, 2006) (CIPA governs “electronic  
23 communications”); *In re Facebook, Inc. Internet Tracking Litigation*, --- F.3d --- 2020 WL  
24 1807978 (9th Cir. Apr. 9, 2020) (reversing dismissal of CIPA and common law privacy claims  
25 based on Facebook’s collection of consumers’ Internet browsing history).

26 40. Jornaya’s TCPA Guardian software is a “machine, instrument, contrivance, or . . .  
27 any other manner” that is used by Jornaya and DDR Media to engage in the unlawful practices  
28

described in this Complaint.

41. By using Jornaya's eavesdropping software, Defendants intentionally tapped the lines of communication between Plaintiff (and absent Class Members) and DDR Media's websites.

42. Defendants lack prior express consent from Plaintiff and the Class for Defendants to "read or attempt to read or learn the contents or meaning" of their electronic communications being made in the State of California.

43. DDR Media partnered with (and conspired with) Jornaya to achieve the unlawful conduct described herein.

44. This violation of Section 631(a) is an invasion of privacy and confers Article III standing.

45. Absent an injunction, Plaintiff and the members of the alleged Class are at risk of continued harm. Jornaya's software is used by many website operators and there is no practical way to know if the future whether website communications will be monitored and recorded by Defendants, absent ceasing to utilize the internet (a near impossibility in the year 2022).

46. Accordingly, pursuant to Cal. Penal Code § 637.2(a)(1), Plaintiff and the Class seek injunctive relief and statutory damages in the amount of \$5,000 per violation.

**SECOND CAUSE OF ACTION**

**Violation of California's Unfair Competition Law, Cal. Bus. Prof. Code  
Section 17200 *et seq.* ("UCL")  
(On Behalf of Plaintiff and the Class)**

47. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

48. Defendants' conduct set forth above is unlawful and in violation of the CIPA and its implementing regulations. As such, Defendant has violated the Unfair Competition Law's "unlawful" prong with respect to the California Class members.

49. Defendants' conduct violated Cal. Penal Code § 631 and thus violated the UCL's unlawful prong.

50. Defendants' conduct also invaded the privacy of the Plaintiff and the Class Members and was therefore unlawful and unfair.



1           51. Defendants should be enjoined from making such additional invasions of privacy.

2           52. Defendants should also be ordered to secure prior express consent before any  
3 further wiretapping of electronic communication.

4           53. Defendants should also be required to pay reasonable costs and attorneys' fees.

5                                   **THIRD CAUSE OF ACTION**  
6                   **Invasion of Privacy Under California's Constitution**  
7                   **(On Behalf of Plaintiff and the Class)**

8           54. Plaintiff incorporates by reference the foregoing allegations as if fully set forth  
9 herein.

10          55. Plaintiff and other members of the Class have an interest in conducting personal  
11 activities (such as visiting websites), without observation or interference, including visiting  
12 websites without being subjected to secret wiretaps.

13          56. Defendants intentionally invaded the privacy rights of Plaintiff and other members  
14 of the Class, and worked cooperatively to do so.

15          57. This invasion of privacy is serious in nature and scope and constitutes a breach of  
16 the social norms in the digital age.

17          58. Thus, Plaintiff seeks all relief available for invasion of privacy under the California  
18 Constitution on behalf of herself and members of the alleged Class.

19                                   **PRAYER FOR RELIEF**

20          WHEREFORE, Plaintiff, individually and on behalf of the Class, respectfully requests that  
21 this Court issue an order:

- 22           A. Certifying this case as a class action on behalf of the Class defined above,  
23                appointing Williams as class representative and appointing her counsel as class  
24                counsel;  
25           B. Finding that Defendants' actions constitute repeated and willful violations of the  
26                CIPA;  
27           C. Awarding injunctive relief under the CIPA enjoining Defendants from continuing to  
28                violate the CIPA by unlawfully wiretapping electronic communication without

consent;

D. Awarding damages, including statutory damages where applicable, to Plaintiff and the Class in amounts to be determined at trial;

E. Awarding Plaintiff and the Class their reasonable litigation expenses and attorneys' fees;

F. Awarding Plaintiff and the Class pre- and post- judgment interest, to the extent allowable; and

G. Such further and other relief as the Court deems reasonable and just.

### JURY DEMAND

Plaintiff requests a trial by jury of all claims that can be so tried.

Respectfully submitted,

Dated: March 30, 2023

**LORETTA WILLIAMS**, individually and on behalf  
of all others similarly situated,

By: /s/ Taylor T. Smith  
One of Plaintiff's Attorneys

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*Counsel for Plaintiff and the Class*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the above titled document was served upon counsel of record by filing such papers via the Court's ECF system on March 30, 2023.

/s/ Taylor T. Smith